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COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE 158th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 November 1993, at 10 a.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Paraguay (CAT/C/12/Add.3)

1. At the invitation of the Chairman, Mr. Gauto (Paraguay) took a seat at the Committee table.

2. Mr. GAUTO (Paraguay), introducing the report, said that Paraguay had recently acceded to the Convention against Torture, which it hoped would help to expand humanitarian law, prevent acts punishable under the Convention and consolidate Paraguay's objectives in the new era of democracy that had begun in 1989.

3. Paraguay was aware of its obligations regarding respect for human rights and was gradually taking a more active part in United Nations forums for the promotion of those rights and the establishment of a more favourable climate for developing the human personality.

4. His country had now emerged from 35 years of authoritarian rule during which human rights had been ignored and torture used as a deterrent or punishment. Mr. Mario Schaerer Prono, who was mentioned in paragraph 38 of the report as a victim of torture in police premises, had been a secondary school classmate of his own and there had been other cases of death by torture under the Stroessner regime. However, the situation had changed greatly in Paraguay today, although much still remained to be done both by the authorities and by citizens themselves to ensure that human rights were fully respected.

5. One of the first acts of the new Government of General Rodriguez after the overthrow of President Stroessner had been to set up a Human Rights Division. Unfortunately, for financial reasons, the director and officials of that Division had been unable to attend the Committee's session.

6. In Paraguay, torture was no longer considered by the authorities or by individuals as an instrument of investigation or punishment and its elimination was guaranteed by full freedom of the press. Moreover, the new Constitution placed great emphasis on a legal framework to ensure respect for human rights and on machinery to allow the Government to comply with its obligations to respect those rights.

7. Important developments included the regulation of the constitutional right of habeas corpus, since there had been gaps in the rules which the authorities had been able to exploit; the establishment of the office of Defender of the People; and the guarantee of the independence of the judiciary.

8. Paraguay would continue to cooperate in the work of the Committee and hoped in the not too distant future that a Paraguayan would become one of its members.

9. Mr. LORENZO (Country Rapporteur), thanking the representative of Paraguay for his introduction to the comprehensive report of his country, expressed his satisfaction at Paraguay's having joined the ranks of democratic nations after 34 years of dictatorship and at the Government's determination to protect and promote human rights.

10. Referring to paragraphs 10 and 11 of the report, he asked about the status of the legislation being enacted on the offence of torture, and whether that offence had been included in the Penal Code.

11. With respect to paragraph 12, he asked how long a person could be detained incommunicado or without judicial process and after what length of time he could see a lawyer of his choice, an independently appointed doctor, and his family.

12. Paragraph 15 referred to a bicameral commission which was already investigating unlawful acts. He asked for details of complaints of torture received by that commission, what investigations it was carrying out, whether torture had been proved, whether the accused had been brought to court and whether any sentences had been handed down.

13. Paragraph 16, which stated that the incorporation of the Convention against Torture into Paraguayan legislation was in the course of preparation and adoption, seemed to contradict article 137 of the Constitution, which provided that treaties, conventions and international agreements formed part of domestic legislation. Perhaps what was meant was that legislation was being enacted to fulfil Paraguay's obligation to comply with article 2 of the Convention, under which each State party had to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. If his interpretation was correct, Paraguay should provide information on the relevant legislation, and in any case, make a declaration that the Convention was indeed part of its domestic legislation.

14. With regard to paragraph 19 of the report, a careful study of articles 174 and 341 of the Penal Code showed that acts of torture in Paraguay might be punished leniently. It was therefore important to know what legislation was being enacted on the offence of torture. The Committee did not require the inclusion in the Penal Code of an offence known as torture, but it was essential that any conduct defined as torture in the Convention should be covered by the Penal Code and be severely punishable. The Penal Code should therefore cover all offences listed in article 1 of the Convention, including psychological torture, and the relevant legislation should be quickly adopted.

15. Referring to paragraph 26 of the report, he was glad to note that provision had been made for the independence of the judiciary. It had been common knowledge that, under the previous regime, judges in Paraguay would be appointed only if they were members of the Colorado Party. However, details were needed on the extent to which the situation had changed in practice on whether there were any forms of outside influence still weighing on judicial impartiality or independence.

16. Turning to paragraph 32, he said he welcomed the fact that access had been granted to places where alleged acts of torture took or had taken place. If the Government of Paraguay were to continue with its democratization process, military and police establishments had to be open to visits from Government and other authorities and access granted, without prior judicial authorization, to files and archives containing details and complaints of torture and other abuses committed during the Stroessner regime.

17. Paragraph 36 showed that Paraguay had adopted a system in which criminal courts took precedence over civil courts. Judges were responsible for trying cases that came within their particular sphere of competence and civil judges had to respect and accept the decisions handed down by criminal judges. The virtues of such a system were not for the Committee to decide. However, it did need to know whether the provisions of article 14, paragraph 1, of the Convention were being implemented in full. Although it was often possible for a person to demonstrate that torture had indeed been inflicted, it was not always quite as easy to prove who had committed it. In that case, no criminal sentence could be handed down in the absence of an accused. It could be asked whether that implies that civil compensation would not be granted in Paraguay, but article 39 of the Constitution established the right to compensation for any injury or harm inflicted by the State. It should therefore be enough for a person to show that he had been subjected to torture by an agent of the State, even though the perpetrator's identity was unknown. In its replies, the Government should clarify that point and in order fully to implement article 14, paragraph 1, of the Convention, Paraguay should adopt legislation to separate civil compensation for victims of torture from criminal trials against the persons responsible for torture.

18. Paragraph 36 also seemed to imply that only direct victims of torture were entitled to compensation, whereas, in most countries, entitlement was extended to include those indirectly affected by torture, namely, the spouse and children. Article 14, paragraph 1, of the Convention stated that "dependants" and not just "heirs", as mentioned in paragraph 36 of the report, should be entitled to compensation. Was Paraguay aware of the discrepancy between its national legislation and the provisions of the Convention and what would it do to rectify it?

19. The comments he had made on paragraph 16 of the report also held true for paragraph 37.

20. The Committee would welcome information on whether Paraguay had considered making declarations under articles 21 and 22 of the Convention. In respect of paragraph 48, more information was needed on the investigation and trials of torture allegedly committed under the previous regime, since it had formerly been impossible to institute proceedings against officials and members of the Government. Had any decision been taken as to when statutory limitations should begin?

21. In connection with paragraph 76, the Committee would appreciate information on any developments with regard to the implementation of article 5, paragraph 1 (b) and (c), of the Convention. It would like to know whether the possibility of jurisdiction based on the nationality of the victim

or of the torturer could be regarded as having been provided for in domestic legislation solely because the Convention was incorporated in domestic legislation, in accordance with article 137 of the Constitution.

22. A document entitled "Torture in Paraguay: Past and Present" had been prepared by the Paraguayan Committee of Churches for Emergency Assistance and the International Human Rights Law Group. Although it commended the positive steps taken by the present regime to end human rights violations and to work towards democracy, it also highlighted areas of concern with regard to human rights violations, torture and unlawful acts by judges and law enforcement agencies. The Committee would welcome information on the stage reached in the investigations into alleged torture under the Stroessner regime referred to in the document and on whether allegations relating to administrative procrastination and the inordinate length of time taken for trials to go to court and for final judgements to be handed down were still relevant and what had or would be done to remedy the situation.

23. The report of Paraguay made no mention of the prison riots in Tacumbú and the correctional prison for minors in Asunción referred to in the document on "Torture in Paraguay: Past and Present". The Government's replies should include full details of the causes and consequences of the riots.

24. The document on torture in Paraguay also contained serious allegations relating to poor prison conditions, arbitrary detention, the detention, torture and ill-treatment of minors, the ill-treatment of army conscripts and extortion by law enforcement officials.

25. It was a sad fact that, in some law enforcement agencies, certain practices and customs which were a throw-back to the previous regime and which amounted to torture, had become entrenched. The Government of Paraguay should provide details of the measures being taken to re-educate and train law enforcement officials in an effort to eradicate such practices. What was being done to prevent the prolonged and unlawful detention of prisoners, to ensure judicial monitoring of the police and to eliminate all practices which were contrary to the Convention? Allegations of psychological and physical torture were particularly serious. Such torture included the so-called "submarino", by which the victim's mouth and nose was kept under water until he was close to drowning. The Government's replies should give full details of what it was doing to put an end to that abhorrent practice.

26. Mr. EL IBRASHI (Alternate Country Rapporteur) thanked the representative of Paraguay for his excellent introduction and the thorough country report and congratulated the Government of Paraguay on the steps it had taken on the road to democracy since February 1989.

27. His first question concerned the definition of torture. Although, as pointed out in paragraph 45 of the report, a legal provision punishing torture was contained in the Constitution itself and was specifically embodied in the proposed reform of the Penal Code, it seemed that Paraguayan legislation contained no definition of torture.

28. According to paragraph 49 of the report, complaints of torture were investigated on the initiative of the Public Prosecutor's Department or the

sitting judge, whereas paragraph 102 stated that, whenever there were reasonable grounds for believing that a torture-related offence had been committed, the judicial and police authorities and the Public Prosecutor's Department were required to initiate immediate measures. It was not clear which authority must initiate the proceedings and what the distinction was between the judicial and police authorities in that regard.

29. He was pleased that strict regulations governed states of emergency (paras. 55-57) and asked how many times a state of emergency had been declared since the beginning of the democratic process and whether a state of emergency was currently still in effect.

30. Turning to paragraph 35, he inquired whether proceedings for civil liability were initiated automatically or whether it was up to the victim to do so. He also wished to know whether the victim had to wait for the decision of the criminal court or whether civil liability proceedings could begin beforehand. He noted that, in certain countries, the victim must wait until the end of criminal proceedings, whereas, in other countries, that was not the case.

31. Paragraph 111 stated that "the principals would be obliged to provide redress for the injury caused and compensation". What was the basis for compensation? He wondered whether the delegation of Paraguay could give examples of cases where persons had been held responsible. What was the role of the State in such cases? Was its responsibility automatically involved if the guilty party, for example, a police officer, a soldier or any other civil servant, was unable to pay compensation?

32. Paragraph 103 stated that "In the case of the police, it has been reported that torture and cruel treatment of detainees have been terminated and that the apparatus or instruments that were used under the regime deposed in 1989 have consequently been dismantled". He asked whether examples could be given. Who had reported that information and was it official?

33. Paragraph 104 referred to the reform of the Code of Criminal Procedure. What was included in the new Code that was of relevance to the Convention against Torture and the work of the Committee against Torture?

34. Mr. SORENSEN joined the Country Rapporteur and the Alternate Country Rapporteur in praising the country report and the oral introduction by Mr. Gauto and in congratulating Paraguay on the reform process under way.

35. The transition from dictatorship to democracy had always been fraught with difficulties. He would focus on only three problem areas: impunity, education and rehabilitation.

36. Paragraph 41 contained a startling statement: that a Government admitted that torture had been the only form of questioning showed the extent of the problem that Paraguay was facing. In his view, education was of paramount importance in overcoming that legacy. He welcomed the extensive reply given in the report on article 10 of the Convention (paras. 89-101). That demonstrated Paraguay's determination to pursue police training. However, he would have liked to see a paragraph on the education of medical personnel,

which was also an obligation for States under article 10. It was well known that, in many Latin American countries, members of the medical profession had participated in torture. In that context, some solution would have to be found to the problem of impunity, since many of those same persons were still practising, and torture victims hesitated to go to doctors who had tortured them in the past. Paragraph 41 also implied that there were large numbers of survivors of torture, but such persons were usually afraid to make themselves known. Medical personnel must therefore be trained in identifying torture victims so that rehabilitation could begin.

37. According to paragraph 111, no claims had yet been made against the State; he hoped that that would soon change.

38. One type of rehabilitation that had not been referred to was medical rehabilitation and he drew attention in that context to the provisions of article 14 of the Convention. Rehabilitation centres were needed and the United Nations had technical assistance services to help not only in initiating programmes to educate the police and medical personnel, but also in setting up rehabilitation centres, if Paraguay so desired.

39. With regard to impunity, he drew attention to article 60 of the Vienna Declaration and Programme of Action (A/CONF.157/23), which stressed the importance of abrogating impunity for torture.

40. He suggested that Paraguay might wish to make a small donation to the United Nations Voluntary Fund for Victims of Torture; not only would that help such victims, but it would also be of symbolic importance for Paraguay to show its respect for torture victims.

41. Mr. BURNS thanked the delegation of Paraguay for the comprehensive material made available to the Committee.

42. The report showed that Paraguay had a very advanced and comprehensive system of law for the protection of human rights. He had been particularly struck by the establishment of the office of a human rights ombudsman and he was pleased to note that attempts were being made to incorporate various international human rights instruments into constitutional reforms and in the Penal Code. That was important because, as already pointed out, the Constitution of Paraguay, while prohibiting torture, did not define it. It was to be hoped that such a definition would be included in the new Penal Code.

43. Paragraph 12 of the report described the excellent protection afforded under the Paraguayan Constitution. However, he would like to know exactly what was meant by "incommunicado detention" and what its limits were. He was encouraged to see that, under the Paraguayan Constitution, even in a state of emergency, counsel was entitled to have access to a detainee. That went beyond the situation described in most of the States that had appeared before the Committee. He took it that the maximum period of detention was 60 days, inasmuch as a state of emergency itself was limited to that same period, as pointed out in the core document on Paraguay (HRI/CORE/1/Add.24, para. 160).

44. He asked the representative of Paraguay whether there were separate military or security police courts, and if so, what rules applied to them?

45. Paragraph 15 spoke of complaints having been received of alleged torture. He wondered whether those allegations concerned acts committed during the Stroessner regime or thereafter and whether such complaints had been followed up.

46. Like Mr. Lorenzo, he was puzzled by an apparent contradiction in paragraph 16, where it was stated that the Convention against Torture had entered into force three years previously, but that its incorporation into national legislation was in the course of preparation and adoption. Surely that did not mean that the Paraguayan Congress was still in the process of ratifying the Convention. Presumably the point being made was that the Government of Paraguay was exploring ways of incorporating the Convention into domestic criminal code procedures.

47. With regard to the question of compensation he asked whether there was any provision for legal assistance or whether the burden of bringing suit was borne entirely by the torture victim.

48. He was pleased to note that habeas corpus legislation was not suspended during states of emergency.

49. He asked whether the case referred to in paragraph 38 had occurred during the Stroessner regime or thereafter.

50. Like Mr. Sorensen, he had been shocked by the statement in paragraph 41 that torture had been the only form of questioning in police circles. He wondered what steps had been taken to deal with police officers who had committed torture. In his view, if the phenomenon was so deeply embedded in police practice, it would take more than education to eradicate it.

51. Concerning paragraph 49, he asked whether the acts that had given rise to the arrest of the Director of National Prisons had taken place during the Stroessner regime or thereafter.

52. Paragraphs 60-62 seemed to suggest that the doctrine of due obedience was an acceptable defence in certain cases. That would be contrary to the Convention, which did not tolerate the defence of due obedience under any circumstances.

53. In connection with paragraph 111, he asked whether no claims had yet been made against the State or whether no claims had been successful.

54. Mr. BEN AMMAR said that the precedence of international treaties over national law and the strict conditions specified for their denunciation were signs of Paraguay's political resolve to promote human rights and freedoms.

55. With regard to a point raised by Mr. Sorensen, he said he doubted that a police force whose only method of interrogation had been torture could have completely overhauled the system for preventing abuses and restrictions on individual freedom and that respect for the constitutional rules on detention

could have taken root in so short a time. A number of questions needed to be answered: had the police force been purged and new recruitment taken place? Did arrangements exist for the Defender of the People to carry out effective monitoring of places of detention, including unannounced visits, what powers did the Defender of the People have, and how many cases had been successfully prosecuted by that office? What effective penalties existed in cases of violations of the physical integrity of individuals? Was there a police code of ethics?

56. Mr. MIKHAILOV said that he was impressed by the wide-ranging and thorough process of legislative reform which the report reflected and which was part of Paraguay's difficult and complex transition from dictatorship to democracy.

57. While the report was, in his view, very satisfactory in terms of the amount of information it contained on legislative measures, he wished to know what progress had been made on the draft Penal Code referred to in paragraph 11 and what provisions it would include relating to torture. He would also like to know the difference between the justices of the peace referred to in paragraph 27 and other judges.

58. Referring to paragraphs 30 to 33, he requested clarification on the legal status and the powers and responsibilities of the office of Defender of the People and its relationship to other offices and the judiciary. In particular, he wished to know about the competence of the Defender of the People to act ex officio and whether that was to be understood as the power to issue rulings or initiate legal proceedings. Were the Defender of the People and the ombudsman referred to in paragraph 33 one and the same thing and, if not, what was the difference between them?

59. Lastly, he asked whether the cases referred to by Mr. Lorenzo dated from before or after 1989 and what measures the Government had taken to provide compensation.

60. Mr. DIPANDA MOUELLE commended the efforts made by the Government of Paraguay to bring about legislative reform on which a truly democratic State might be based.

61. Commenting on ambiguities or deficiencies in the report, he suggested that article 12 of the draft Penal Code (para. 11 of the report) should also cover physical or psychological violence against suspects. He wished to know what exactly was meant by the term "custodial sentence" used in article 12 of the National Constitution (para. 12 of the report) and requested clarification of possible grounds for detention, given that the police had the power to make an arrest without a written order and to detain a person for 24 hours. He also wished to know what was meant by the terms "With breach of trust" and "With cruelty" used in article 337 of the Penal Code (para. 19 of the report).

62. The CHAIRMAN thanked the Government of Paraguay for its report and added his congratulations to those of previous speakers on the country's transition to democracy.

63. He asked whether the international treaties ratified by Paraguay were implemented directly or needed to be incorporated into national legislation.

64. Some of the legislation referred to in the report which was supposed to reflect the provisions of the Convention in fact did so only partially. He urged the Paraguayan authorities to give careful and detailed consideration to ensuring that the provisions of the Convention were fully incorporated into national legislation.

65. Referring to paragraph 37 of the report, he expressed concern about the fact that certain acts covered by the Convention would not be punishable offences until future legislation had entered into force. It was not clear when such legislation would enter into force and, until it did so, Paraguay would not be able fully to comply with the terms of the Convention. He urged the competent authorities to do the necessary legislative groundwork as quickly as possible.

66. Paragraph 63 of the report referred only to extradition, not to the expulsion or the forcible return of persons, and thus did not fully reflect article 3 of the Convention. It was not clear how the Convention would be applied to cases of expulsion or forcible return, if at all, and, in his view, Paraguayan legislation was incomplete.

67. Paragraph 72 was ambiguous in that it was not clear whether the Government was stating what it regarded as an objective or as the inevitable outcome of the implementation of the provisions already adopted in Paraguay.

68. Paragraph 76 appeared to indicate that national legislation did not include all of the provisions of article 5 of the Convention. A deficiency in article 610 of the Code of Criminal Procedure was also evident from paragraph 77 of the report; according to article 610, the provisional arrest of an alien under the circumstances described was subject to a direct request from the judicial authorities and required an extradition treaty between the countries concerned. However, no such request was required under article 6, paragraph 1, of the Convention, which the article in question was supposed to reflect, and article 6 did not refer to any need for an extradition treaty between two States parties to the Convention.

69. As to the impartial judgement referred to in paragraph 108, he pointed out that, so far, only one investigation had resulted in a court case namely, the Shaerer Prono case, whose final outcome was still subject to appeal; confident claims of impartiality might therefore be premature. He wished to know the outcome of the appeal and to have more information on the progress made in other cases which had been brought to light by Americas Watch and by church bodies.

70. With regard to provisions for compensation to victims, he agreed with other members of the Committee that the victims of torture inflicted by agents of the State should be eligible to compensation from the State. Victims might not be able to identify their torturers, who might in any case be in no position to provide compensation. Perhaps for those reasons, no applications for compensation had yet been submitted. If article 14 of the Convention was to be fully implemented, the State would have to accept responsibility for its agents.

71. Like other members of the Committee, he thought it unlikely that the police could have changed their methods overnight. Further improvements were certainly possible and necessary and the advisory services of the Centre for Human Rights might be a useful source of assistance in, for example, training police in effective and humane methods of interrogation, as had been shown by the recent assistance given to Romania.

72. In conclusion, he urged the Government of Paraguay to commit itself to implementing articles 21 and 22 of the Convention, since that would greatly assist in eradicating torture in the country.

73. Mr. GAUTO (Paraguay) thanked the Committee for its painstaking consideration of the report and the generally positive comments that had been made. His country had little experience in preparing such reports and he hoped that it would be able in future years to produce fuller reports giving a clearer and more detailed view of the situation in Paraguay.

The meeting rose at 12.45 p.m.